

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Albert Reuben Kuperman

v.

Civil No. 09-cv-066-JD

State of New Hampshire, et al.

O R D E R

Albert Reuben Kuperman, proceeding pro se and in forma pauperis, brought a civil rights action, alleging claims under 42 U.S.C. §§ 1981, 1983, 1985, 1986, and 1988. The magistrate judge conducted a preliminary review, pursuant to 28 U.S.C. § 1915A(a) and D.N.H. Local Rule 4.3(d)(2), reported that Kuperman's complaint failed to state a claim, and recommended that all of the claims be dismissed.<sup>1</sup> Kuperman objected to the magistrate's report and recommendation on the grounds that the federal claims which were barred under Heck v. Humphrey, 512 U.S. 477 (1994), should be dismissed without prejudice; that issue preclusion did not bar his federal claim which had been raised and decided in a habeas corpus action, and that immunity did not protect the

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<sup>1</sup>The magistrate judge also construed Kuperman's complaint to allege a state law claim for defamation, recommending that the court decline supplemental jurisdiction as to that claim under 28 U.S.C. § 1367(c)(3).

defendants from suit. He also asked to withdraw his civil rights conspiracy claims without prejudice.

The court reviewed Kuperman's objection to the report and recommendation and held that issue preclusion barred the claims that had been decided in the habeas action, that the judges and prosecutors named as defendants were entitled to immunity, and that the Heck rule applied to his claims. The court approved the report and recommendation and dismissed all of the claims with prejudice.

On appeal, Kuperman challenged the dismissal of his § 1983 claims. The First Circuit affirmed the district court's ruling on the preclusive effect of the judgment in Kuperman's habeas action as to his § 1983 claims, subject to modification of the judgment entered here. The First Circuit directed this court to modify the judgment to a dismissal of the § 1983 claims without prejudice.

Conclusion

For the foregoing reasons, the order issued on July 1, 2009, (document no. 24) and the judgment (document no. 25) are amended to state:

As directed by the First Circuit Court of Appeals, the plaintiff's claims brought pursuant to 42 U.S.C. § 1983 are dismissed without prejudice. The remaining federal claims are dismissed with prejudice. The court declines to exercise jurisdiction over the state law claim for defamation, which is dismissed without prejudice.

SO ORDERED.

  
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Joseph A. DiClerico, Jr.  
United States District Judge

March 22, 2010

cc: Albert Rueben Kuperman, pro se